

GAUTAM DUTTA (State Bar No. 199326)
BUSINESS, ENERGY, AND ELECTION LAW, PC
1017 El Camino Real # 504
Redwood City, CA 94063
Telephone: 415.236.2048
Email: Dutta@BEELawFirm.com
Fax: 213.405.2416

Attorneys for Plaintiffs
SHAHID BUTTAR FOR CONGRESS COMMITTEE and
SHAHID BUTTAR

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHAHID BUTTAR FOR CONGRESS
COMMITTEE and SHAHID BUTTAR, an
individual;

Plaintiffs,

vs.

HEARST COMMUNICATIONS, INC., a
Delaware corporation; and DOES 1
through 5;

Defendants.

CASE NO. 3:21-cv-05566-EMC

**PLAINTIFFS' OBJECTIONS TO
DEFENDANTS' REPLY
EVIDENCE**

Hearing Date: Dec. 15, 2022, 1:30 pm

JUDGE: Hon. Edward M. Chen
COURTROOM: 5 – 17th Floor

I. Introduction

Plaintiffs Shahid Buttar for Congress Committee and Shahid Buttar **object** to Defendant Hearst Communications, Inc's improper reply evidence, proffered by way of the Nov. 14, 2022 Declaration of Diego Ibarguen (Dkt. 60, "Ibarguen Declaration").

II. Legal Analysis

The entirety of the Ibarguen Declaration must be disregarded, for it improperly and belatedly proffers evidence that Hearst could and should have proffered in its Sept. 23, 2022 Moving Papers. "The reply brief is *not intended* to be the brief that shows for the first time the

1 movant's evidentiary support for the relief sought in the movant's opening brief.¹ Indeed, this
 2 Court has excluded a reply declaration because it "contain[ed] new evidence ... that *could have*
 3 *been included* with ... [the opening] motion."²

4 Here, Hearst improperly and belatedly proffers evidence that could and should have been
 5 included with its Moving Papers. Specifically, the Ibarguen Declaration proffers certain email
 6 correspondence from July 2020. There is no reason why that correspondence – which, as Mr.
 7 Ibarguen himself admits, was discussed by the operative *complaint*³ – could not have been
 8 presented as part of Hearst's Moving Papers.

9

10 III. Conclusion

11 Because Hearst improperly and belatedly proffers reply evidence, the entirety of the
 12 Ibarguen Declaration and any part of Hearst's papers relying on such barred evidence must be
 13 summarily **disregarded**.

25 ¹ *Mercado v. Sandoval, Inc.*, No. 2:08-cv-02648-GEB-EF, 2009 WL 2031715, at *1 (E.D.
 26 Cal. July 9, 2009) (italics added).

27 ² *In re Lenovo Adware Litig.*, No. 15-MD-02624-RMW, 2016 WL 6277245, at *14 (N.D.
 28 Cal. Oct. 27, 2016) (italics added); *see also Provenz v. Miller*, 102 F.3d 1478, 1483 (9th Cir.
 1996).

3 ³ Nov. 14, 2022 Ibarguen Decl. ¶2.

1 DATED: Nov. 21, 2022
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3 BUSINESS, ENERGY, AND ELECTION
4 LAW, PC
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6 By: /s/ Gautam Dutta
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8 GAUTAM DUTTA, ESQ.
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10 Attorneys for Plaintiffs
11 SHAHID BUTTAR FOR CONGRESS
12 COMMITTEE and SHAHID BUTTAR
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